

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE**

<b>IN RE:</b>	<b>July 15, 2004</b>	)	
		)	
<b>SOUTHPOINT FINANCIAL SERVICES</b>		)	<b>DOCKET NO.</b> <b>04-00151</b>

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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This matter came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on June 21, 2004, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Southpoint Financial Services ("Southpoint" or "the Company") related to alleged violations of the Tennessee Do-Not-Fax Law, Tenn. Code Ann. § 65-4-501 *et seq.* The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-502(c) prohibits a person from transmitting or causing another person to transmit an unsolicited facsimile advertisement. Tenn. Code Ann. § 65-4-504(a) authorizes the TRA to assess penalties for violations of Tennessee's Do-Not-Fax Law, including the issuance of a cease and desist order and/or the imposition of a civil penalty of up to a maximum of \$2,000 for each violation.

Following receipt of a complaint on April 21, 2004 alleging a violation of Tenn. Code Ann. § 65-4-501 *et seq.*, the CSD began an investigation of Southpoint. The CSD immediately notified Southpoint of the alleged violation and received two additional complaints against Southpoint on May 12 and May 13, 2004. For these three alleged violations, the Company faced a maximum penalty in the amount of \$6,000. Ultimately, the CSD and Southpoint agreed to a settlement in the amount of \$4,000 in remediation of these alleged statutory violations. The CSD represented that this settlement advances a fair and reasonable resolution of the staff investigation

### The June 21, 2004 Authority Conference

At the June 21, 2004 Authority Conference, Mr. John Murphy of Southpoint participated telephonically on behalf of the Company and affirmed its consent to the terms of the Settlement Agreement. Dr. Eddie Roberson, Chief of the CSD, summarized the Agreement. The Directors voted unanimously to approve the Settlement Agreement.

### **IT IS THEREFORE ORDERED THAT:**

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. Southpoint agrees to pay \$4,000 in full settlement of these complaints, the first installment of \$2,000 to be remitted to the Office of the Chairman of the TRA no later than thirty days following approval of the Settlement Agreement by the TRA Directors.<sup>1</sup> The remaining \$2,000 shall be paid in five installments of \$400 each and shall be remitted to the TRA no later than the first business day of the following five consecutive months.

3. Upon payment of the amount of \$4,000 and compliance with the terms of the Settlement Agreement attached hereto, Southpoint is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Southpoint to comply with the terms and conditions of the Settlement Agreement, the TRA reserves the right to re-open this Docket.

  
Deborah Taylor Tate, Chairman

  
Pat Miller, Director

  
Ron Jones, Director

<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No 04-00151.



alleging receipt of another unsolicited facsimile advertisement from Southpoint on May 11, 2004. The CSD provided notice to the Company of the third complaint on May 14, 2004.:

Tenn. Code Ann. § 65-4-502(a) prohibits persons from transmitting or causing another person to transmit an unsolicited facsimile advertisement. Tenn. Code Ann. § 65-4-504(a) authorizes the TRA to assess penalties for violations of Tennessee's Do-Not-Fax Law, including the issuance of a cease and desist order and/or the imposition of a civil penalty of up to a maximum of \$2,000 for each violation. Accordingly, the Company faces a maximum penalty in this proceeding of \$6,000 stemming from these three complaints.

In negotiating this Settlement Agreement, the CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Southpoint is located in Alpharetta, Georgia and employs approximately twenty persons. After receiving notice of the complaints, Southpoint contacted the CSD and expressed an interest in resolving these alleged violations, as well as any additional complaints whether presently known or unknown by the CSD. To this end, the CSD and Southpoint agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. Southpoint admits that the three complaints against it are true and valid complaints.
2. After receiving notice of the complaints, the Southpoint contacted the CSD and expressed an interest in resolving this matter.
3. Southpoint agrees to pay \$4,000 in full settlement of these complaints, the first installment of \$2,000 to be remitted to the Office of the Chairman of the TRA no later than thirty days following approval of the Settlement Agreement by the TRA Directors. The remaining \$2,000 shall be paid in five installments of \$400 each and shall be

remitted to the TRA no later than the first business day of the following five consecutive months.<sup>1</sup>

4. Upon completion of the terms and conditions of this Settlement Agreement, Southpoint is excused from further proceedings in this matter.
5. Southpoint agrees to cooperate fully with the CSD staff in its continuing investigation of Southpoint's broadcast fax vendors and to comply in the future with all provisions of Tennessee's Do-Not-Fax Law, Tenn. Code Ann. § 65-4-501 *et seq.*
6. A representative of Southpoint will participate telephonically in the Authority Conference during which the Directors will consider this Settlement Agreement.
7. In the event that Southpoint fails to comply with the terms and conditions of this Settlement Agreement, the TRA reserves the right to re-open this Docket. Southpoint shall pay any and all costs incurred in enforcing the Settlement Agreement.
8. Any violation of Tennessee's Do-Not-Fax Law by Southpoint after the date of this Settlement Agreement will be treated separately and will not be cause to re-open this Docket.
9. If any clause, provision or section of this Settlement Agreement is held to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

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<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No 04-00151

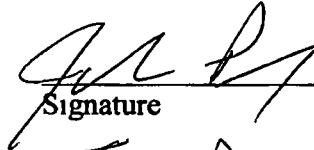
10. This Settlement Agreement represents the entire agreement between the Parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

6-8-04

Date



Signature

John Perry

Print Name

President

Print Title

Southpoint Financial Services

6/4/04

Date